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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,870	11/18/2003	Jorge Gustavo Vigil	P69259US0	3134

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JACOBSON HOLMAN PLLC  
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WASHINGTON, DC 20004

EXAMINER
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QAZI, SABIHA NAIM

ART UNIT	PAPER NUMBER
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1612

MAIL DATE	DELIVERY MODE
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02/21/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/714,870

**Applicant(s)**

VIGIL ET AL.

**Examiner**

Sabiha Qazi

**Art Unit**

1612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11/5/2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 6-10 and 12-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-10 and 12-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**Non-Final Office Action**

Claims 6-10, 12-14 are pending. No claim is allowed at this time. Amendments are entered.

**Summary of this Office Action dated February 15, 2008**

1. Continued Examination Under 37 CFR 1.114
2. Copending Applications
3. Specification
4. 35 USC § 103(a) Rejection
5. Data in specification
6. Response to Remarks
7. Communication

**Continued Examination Under 37 CFR 1.114**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/05/2007 has been entered.

**Information Disclosure Statement**

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

**Copending Applications**

Applicants must bring to the attention of the examiner, or other Office official involved with the examination of a particular application, information within their knowledge as to other copending United States applications, which are "material to patentability" of the application in question. MPEP 2001.06(b). See *Dayco Products Inc. v. Total Containment Inc.*, 66 USPQ2d 1801 (CA FC 2003).

**Specification**

The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Examiner notes, a typing error in line 1 on page 5. In "additi n" should be "addition". Applicant is requested to correct it.

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

*(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.*

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 6-10, and 12-14 are rejected under 35 U.S.C. 103 (a) as being unpatentable over CHAN et al. (EPA 0206537). See the entire document especially the abstract, lines 21-33 on page 3, lines 1-1-9 on page 4, lines 16-33 on page 6, lines 1-2 on page 7, lines 19-31 on page 11. The reference teaches a solid, phytoactive, N-phosphono-methyl-N-carboxymethyl compositions. It further discloses a processes for the preparation of such compositions by

- (a) forming an initial mixture comprising a phytoactive N-phosphonomethyl-N-carboxymethyl compound, a solvent and a molten surfactant, the surfactant being solid at ambient temperatures;
- (b) removing solvent from the initial mixture to form a final mixture at a temperature above the melting point of the surfactant;

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(c) cooling said final mixture to a temperature below the melting point of the surfactant to form a N- phosphonomethyl-N-carboxymethyl composition which is solid at ambient temperatures; and

(d) processing said composition into particulate form, such as pellets, flakes, granules, or powders. The reference further teaches the use of the prepared composition in controlling vegetation.

Present claims differ from the reference in not claiming use of any solvent wherein the reference use of solvent at initial has been taught which is dried to get a solid form.

It would have been obvious to one skilled in the art to prepare additional useful compositions by using solid surfactants at ambient temperature because the reference teaches that when solid, the surfactant should be readily soluble. Motivation to use solid surfactant has been provided because it teaches that it is important that surfactant is solid at ambient temperatures, i.e. it must be solid at the highest temperature at which the solid produce may be exposed before it is mixed with the diluents by the ultimate user. Such temperature is generally in the range of from -20 to 50 C. Applicant's claimed temperature is 25 C which overlaps the range taught by the reference. In absence of any criticality and/or unexpected results presently claimed invention has been considered obvious to one skilled in the art at the time the invention was filed.

In the light of the forgoing discussion, the Examiner's ultimate legal conclusion is that the subject matter defined by the instant claims would have been obvious within the meaning of 35 U.S.C. 103(a).

**Data in Specification**

The Examiner has considered data in specification. The data is unclear. In formulation A the name of liquid tensioactive agent is missing. Furthermore, no unexpected results are seen. Applicant should explain the novelty and unexpected property of their invention. The declaration filed on September 15, 2005 has been considered.

**Claim Rejections - 35 USC § 112**

Claims 6-10 and 12-14, rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Following reasons apply:

Citation of "compatible with Glyphosate and solid at ambient temperature of about 25 C" in line of claim 6 is unclear. Applicant is requested to explain that 5% to 30% by weight of a hydro soluble tensioactive agent should be compatible with glyphosate or it means mixture with ammonium salt.

In part c) of claim 6 "processing" is indefinite.

Examiner note a typing error in claim 6, part (a) line 5, "polyoxiethylene ether" should be "polyoxyethylene ether".

**Response to Remarks**

- Applicant's arguments regarding 103 (a) rejections was fully considered and were found persuasive therefore rejection over ARNOLD (US Patent 5,612,285) and KUCHIKATA (US Patent 6,228,807) is withdrawn.



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- In order to advance the prosecution Applicant may consider calling the Examiner to discuss the issues surrounding this application.

**Contact Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sabiha Qazi whose telephone number is (571) 272-0622. The examiner can normally be reached on any business day except Wednesday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Krass Frederick can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



SABIHA QAZI, PH.D  
PRIMARY EXAMINER